IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Karamjeet Singh. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No.310/2005
against the order dated 7-3-2005 passed
by the Additional Chief Judicial Magistrate,
Udaipur, in Criminal Misc. Case No.86/2005.

...

Date of Order: October 13, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Pradeep Shah, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 7-3-2005 passed by the Additional Chief Judicial Magistrate, Udaipur (for short, "the trial Court" hereinafter) in Criminal Misc. Cases No.86/2005 and 87/2005, whereby the application filed by the present petitioner under Section 451/457 of the Code seeking interim custody of truck No. RJ-P-9228 was dismissed and the application filed by non-petitioner No.2 Vijendra Singh under the said Sections was allowed and the vehicle was directed to be

handed over to the non-petitioner No.2 on furnishing a Supurdginama and Jamanatnama for a sum of Rs.7 lac to the satisfaction of the trial Court with certain terms and conditions.

I have heard learned counsel for the petitioner and carefully gone through the order impugned.

I appears that the non-petitioner No.2 is in possession of the vehicle in question in pursuance of the order dated 7-3-2005. The petitioner challenged that order but there had not been any interim order in favour of the petitioner and as such the non-petitioner No.2 continued in the possession of the said vehicle.. It appears that the non-petitioner No.2 is the Financer of the said vehicle, which was purchased by the petitioner on hire-purchase basis. The petitioner failed to pay the monthly instalments and consequently the vehicle was re-possessed in exercise of the power under the hire purchase agreement keeping in view the decision of the Hon'ble Supreme Court in Charanjit Singh Chadha Vs. Sudhir Mehra, (2001) 7 SCC 417. The vehicle truck was lying in the rented godown of the non-petitioner No.2 who is the financer. It is alleged that the petitioner committed a theft by taking away the truck from the godown, for which a crime report has been lodged against the petitioner and the matter has been investigation. After investigation, a Challan has been filed against the petitioner for the offence of theft. During pendency of the theft case for the

offence under Section 380 IPC, the petitioner as well as the non-petitioner No.2 filed applications under Sections 451/457 of the Code seeking interim custody of the vehicle on Supurdginama and Jamanatnama. The trial Court found the non-petitioner No.2 as the person best entitled for the custody of the vehicle during pendency of the case and gave the interim custody of the truck to him on Supurdginama and in my view, the trial Court was justified in doing so because the petitioner is an accused in the case and, tehrefore, cannot claim delivery of the property which is the subject-matter of offence of theft and as such, the order impugned cannot be said to be erroneous. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of the process of the Court.

The criminal miscellaneous petition has no force and it is, therefore, dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

mcs